

REMARKS/ARGUMENTS

In view of the foregoing amendments and the following remarks, the applicant respectfully submits that the pending claims are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicant respectfully requests that the Examiner contact the undersigned to schedule a telephone Examiner Interview before issuing any further actions on the merits.

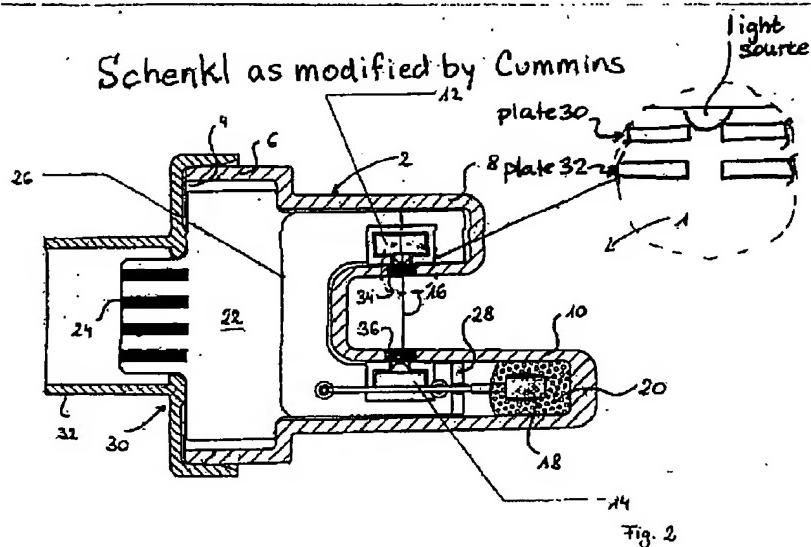
The applicant will now address each of the issues raised in the outstanding Office Action.

Rejections under 35 U.S.C. § 103

Claims 11-13, 15, 18, 21 and 27-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0142316 ("the Schenkl publication") in view of U.S. Patent No. 5,485,013 ("the Cummins patent"). The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Independent claim 11, as amended, is not rendered obvious by the Schenkl publication in view of the Cummins patent at least because the Schenkl publication and Cummins patent, either taken alone or in combination, neither teach, nor make obvious, a sensor in which a

first diaphragm opening is arranged adjacent to, but spaced from, a transmitter and a second diaphragm opening is arranged adjacent to, but spaced from, a receiver in a beam path of the transmitter beam **such that the first and second diaphragms define a fluid spacing for the measurement beam passing therethrough for measuring the transmission properties of the fluid therebetween.** More specifically, if the Schenkl publication were modified by the Cummins patent as proposed by the Examiner, the result would look like this:



As can be seen, the first and second diaphragms (in plates 30 and 32) do not define a fluid spacing for the

measurement beam passing therethrough, for measuring the transmission properties of the fluid therebetween.

Thus, independent claim 11, as amended, is not rendered obvious by the Schenkl publication and the Cummins patent for at least the foregoing reason. Independent claims 12 and 13, as amended, are similarly not rendered obvious by the Schenkl publication and the Cummins patent. Since claims 15 and 29 depend from claim 11, since claims 18 and 30 depend from claim 12, and since claims 21, 27, 28 and 31 depend from claim 13, these claims are similarly not rendered obvious by these references.

In exemplary embodiments consistent with the claimed invention:

The transmitter diaphragm 14 and receiver diaphragm 16 are formed opposite each other in the diaphragm system 12. ***The measurement beam 18 propagates starting from the transmitter diaphragm 14 through the fluid 20 to the receiver diaphragm 16 and passes through this.*** [Emphasis added.]

(Page 17, lines 22-26 of the present application) The Examiner alleges that the plates 30 and 32 in FIGS. 4 and 5 of the Cummins patent correspond to the first and second diaphragms. (Paper No. 20080922, page 3) However, the light to be measured according to the Cummins patent passes from the ***two plates*** and is controlled and reduced "[b]y properly selecting the gap between the two plates and the size of the two apertures." (Abstract of the Cummins patent) By contrast, in the claimed invention a fluid spacing

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